sequently removed from the state. *Held*, that such evidence is inadmissible in criminal cases. *Holifield* v. *City of Laurel*, 50 So. 488 (Miss.).

In civil cases it is almost universally held that evidence of testimony given in a former trial of the same issue between the same parties is admissible if the witness is absent from the jurisdiction. *Wheeler* v. *Jenison*, 120 Mich. 422. Upon the question of applying this rule in criminal cases, however, the courts are not in agreement. There seems to be no sufficient reason for a distinction between the two classes of cases. *People* v. *Devine*, 46 Cal. 45; *Vaughan* v. *State*, 58 Ark. 353, 370. *Contra*, *U. S.* v. *Angell*, 11 Fed. 34; *People* v. *Newman*, 5 Hill (N. Y.) 295. The introduction of the evidence works no greater hardship on the state or the prisoner, than on a party to a civil action. In both cases there has been the all-important opportunity for cross-examination. The constitutional provision that an accused person shall be confronted by the opposing witnesses is very generally understood to be merely declaratory of the common law, and so subject to all the exceptions to the hearsay rule. See *State* v. *McO'Blenis*, 24 Mo. 402. Thus, in the state in which the principal case was decided, the death of a witness will make evidence of his testimony admissible in a subsequent trial of the same case. *Lipscomb* v. *State*, 76 Miss. 223.

INSURANCE — CONSTRUCTION OF PARTICULAR WORDS AND PHRASES IN STANDARD FORMS — "THE INSURED" TO FURNISH PROOFS OF LOSS. — A mortgagor took out insurance payable to the mortgagee as his interest might appear. The policy provided that the mortgagee's interest should not be invalidated by any act or neglect of the mortgagor, and that "the insured" should furnish proofs of loss within a certain time. *Held*, that recovery by the mortgagee is not barred by the lack of proofs within the stipulated time. *Ohio-German Insurance Co.* v. *Krumm*, 12 Oh. Cir. Ct. R. N. S. 364.

In the absence of any provision against invalidation of the policy by neglect of the mortgagor, by the weight of authority, the mortgagee could not recover. *Shapiro* v. *Western Home Insurance Co.*, 51 Minn. 239. The "union mortgage clause" protects the mortgagee from the mortgagor's neglect, but not from his own act or neglect. *Genesee, etc. Association* v. *U. S. Fire Insurance Co.*, 16 N. Y. App. Div. 587. Whether failure to furnish proofs was his own neglect depends on whether the term "the insured" applies to the mortgagor alone, or also to the mortgagee. The cases and text-books frequently suggest that the mortgage clause makes a separate collateral contract of insurance between the underwriter and the mortgagee. See *Queen Insurance Co.* v. *Dearborn, etc., Association*, 175 Ill. 115; 1 CLEMENT, FIRE INSURANCE, 33. If such a view is correct, the mortgagee is as truly "the insured" as the mortgagor. But it is believed that the language referred to is inaccurate, and that the mortgagee is not a promisee in the insurance contract, but merely a beneficial third party. Hence "the insured" refers only to the mortgagor and the principal case is correct.

INSURANCE — MUTUAL BENEFIT INSURANCE — DESIGNATION OF ILLEGAL BENEFICIARY. — A person insured in a mutual benefit society designated an illegal beneficiary. After the insured's death, the administratrix claimed the amount of the certificate. *Held*, that she is entitled to it. *Mullen* v. *Woodmen of the World*, 122 N. W. 903 (Ia.).

The right of a person insured in a mutual benefit society to designate a beneficiary is a mere naked power of appointment. *Pilcher* v. *Puckett*, 77 Kan. 284. This power is not property. *Maryland Mut. Ben. Soc., etc.* v. *Clendinen*, 44 Md. 429. If there is no designation, no one can recover as beneficiary. *Eastman* v. *Provident Mut. Relief Asso.*, 62 N. H. 555. And the appointment of an illegal beneficiary is equivalent to a total failure to appoint. *Rindge* v. *N. E. Mut. Aid Soc.*, 146 Mass. 286. Yet the principal case is supported by several decisions. In some, the mistake is made of treating the power of the assured to appoint a beneficiary, as a right to the benefit. *Newman* v. *The Covenant Mut. Ins. Asso.*,